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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-fifth session

SUMMARY RECORD OF THE 17th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 13 August 1993, at 3 p.m.

Chairman: Mr. AL-KHASAWNEH

later: Mr. YIMER

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The meeting was called to order at 3.15 p.m.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII) (agenda item 6) (continued) (E/CN.4/Sub.2/1993/12, 13, 14 and 37; E/CN.4/Sub.2/1993/NGO/3, 5 and 18)

FREEDOM OF MOVEMENT (agenda item 18) (continued)

1. Mr. AL-DOURI (Observer for Iraq) said that the allegations made by the representatives of the France-Libertés-Fondation Danielle Mitterrand and by the International Federation of Human Rights regarding the daily bombing of the city of Kirkuk by Iraqi forces were entirely groundless. It was evident that those organizations were hostile to Iraq, for reasons well known to those familiar with their activities. Those organizations were well aware, as was the entire world, that Iraq was the only country which had recognized in its constitution and in practice that the Iraqi people included both Arabs and Kurds, who were free to use their language and to exercise all their cultural rights. Furthermore, independence had been granted to Iraqi Kurdistan more than 20 years ago and it was therefore absurd to speak of a policy aimed at destroying the identity of the Kurds. Those organizations refused, moreover, to recognize that the majority of Kurds wished to remain in Iraq among the Iraqi people and that the conflict of interests between the various groups controlling the Iraqi Kurdistan region, with the assistance of the Europeans and the Americans, was the cause of the bloody conflicts in that area and could not therefore be imputed to the Iraqi forces. The Iraqi Government was fully aware of the historic and cultural importance of the citadel of Kirkut as well as many other historic sites in the country and, moreover, had undertaken a vast programme of site preservation and reconstruction. It might be well to recall that the organizations mentioned above had remained silent when the allied forces had destroyed several historic sites during the Gulf war and had even stolen priceless objects. In future, those organizations ought to verify their sources or they would lose the last semblance of credibility.

2. Mrs. SAV (Observer for Turkey), speaking in exercise of the right of reply, said she wished to emphasize that the Greek Cypriot administration continued to make unfounded allegations with regard to Cyprus. The problem of Cyprus went back to 1963 and even to the 1950s, when the terrorist organization EOKA had been created to eliminate in whatever way possible the Turkish population of Cyprus. At that time, Archbishop Makarios had made a public statement that, if it had been delivered today, would have been considered as an incitement to ethnic cleansing. For 11 years, from 1963 to 1974, the Turkish Cypriots had been under armed attack and victims of a veritable war of attrition. Despite the efforts of the United Nations peace-keeping forces in Cyprus, it had not been possible to deliver food aid or assistance from the Turkish Red Crescent to the Turkish Cypriots in need. The operation staged by the Greek Cypriots in July 1974, had it been successful, would have meant the end of the Turkish Cypriots on the island. Fortunately, Turkey had stepped in; as a result, the suffering and humiliation of the Turkish Cypriots had been ended and conditions for negotiations had

been established aiming at the conclusion of a new agreement between the two peoples, which would restore an equal partnership. Peace had reigned on the island since 1974. Democracy, based on the rule of law and respect for human rights, continued to function in the Turkish Republic of Northern Cyprus, in spite of the embargo imposed on it. There was, in consequence, no question of violations of the human rights of the Greek Cypriots in Cyprus. The only genuine human rights violations were acts carried out since 1963 by Greek Cypriots against the Turkish Cypriots, violations to which, since 1974, an embargo had been added. The problem was a political one and in order to resolve it, certain basic principles had to be respected: political equality and partnership; and respect for the principle of the existence of two communities and two regions. Her delegation refused to enter into a debate on that subject in the Sub-Commission.

3. Mr. CHERNICHENKO said that, in respect of agenda item 6, some observers were incorrectly using terms that had a precise legal meaning. One NGO had said, for instance, that Tibet was occupied by China. As Tibet had been part of Chinese territory for 700 years, the term "occupation" was not appropriate. In addition, other speakers had employed the words "occupation" and "annexation" interchangeably. Those terms had different legal meanings and using them in a less than rigorous manner in an emotional state was probably not the best way to resolve problems of that type.

4. With regard to agenda item 18, the report drafted by Mr. Al-Khasawneh and Mr. Hatano on the human rights dimensions of population transfers, including the implantation of settlers (E/CN.4/Sub.2/1993/17) was a flawless study. Paragraph 365, on the danger of encouraging the creation of monoethnic States, and paragraph 368, relating to the insidious modification of the demographic composition of certain countries were of particular significance. Bearing in mind the study, the Sub-Commission might consider, for example, the possibility of broadening the mandate of UNHCR to allow it to work with internal refugees or displaced persons. The idea of elaborating a declaration on that question, as presented in paragraph 377 of the report, was entirely appropriate. A carefully drafted declaration could become a norm in the field of human rights.

5. The CHAIRMAN said that the members of the Sub-Commission could return to that matter during consideration of agenda item 8.

6. Mr. MACRIS (Observer for Cyprus), speaking in exercise of the right of reply, said that the information contained in his previous statement had not been fictional. Those facts were well documented and were taken almost exclusively from reports of the European Commission of Human Rights. Other information came from the Turkish and Turkish Cypriot press. His statement had also reflected the opinion of the international community, as expressed in a series of United Nations resolutions. If those viewpoints were displeasing to Turkey, it was because that country felt itself to be isolated when it applied its expansionist policy, in violation of international law.

7. The assertions made by the observer for Turkey were not new. Having made its views known on many occasions, in the Sub-Commission and elsewhere, the Cypriot delegation did not wish to enter into a polemical debate with her. It sufficed to recall that as a member of the Council of Europe, Turkey could

request an investigation in order to prove those assertions, which it had never done. As to a peaceful settlement of the Cyprus question, he wished to remind members that it was the Turkish Cypriot delegation that had left the negotiating table the previous June.

CONSIDERATION OF DRAFT RESOLUTIONS AND DECISIONS UNDER AGENDA ITEMS 5 AND 13 (E/CN.4/Sub.2/1993/L.2, L.3 and L.4)

Draft resolution E/CN.4/Sub.2/1993/L.2 (agenda item 5)

(Monitoring the eradication of apartheid and the transition to democracy in South Africa)

8. Mr. LEBAKINE (Secretary of the Sub-Commission) said that Mr. Vergne Saboia and Mr. Ramadhane had become sponsors of the draft resolution.

9. Mr. CISSE (Secretariat), presenting the financial implications of the draft resolution under consideration, said that the activities contemplated in it were ongoing and already appeared in the draft programme budget for 1994-1995.

10. Mr. ALFONSO MARTINEZ said that, contrary to practice, the paragraphs of the operative part of the draft had not been numbered and that should be rectified in the final version.

11. The CHAIRMAN said that the Secretariat would make the necessary corrections.

12. Draft resolution E/CN.4/Sub.2/1993/L.2 was adopted without a vote.

Draft resolution E/CN.4/Sub.2/1993/L.3 (agenda item 5)

(Measures to combat racism and racial discrimination and the role of the Sub-Commission)

13. Mrs. ATTAH and Mr. GUISSE requested that their names should be added to the list of sponsors of the draft resolution.

14. Mr. CISSE (Secretariat) said that the financial implications of the draft resolution on the programme budget would be brought to the attention of the Commission if it approved the activities envisaged in it.

15. Mr. BOSSUYT said that he had some reservations with regard to the wording of paragraph 2 of the draft resolution. It was true that Europe had not been free from racism - that was amply demonstrated by history - and that serious signs of racial discrimination and xenophobia had recently appeared. Nevertheless, the Special Rapporteur's task was not to trace the history of racism but to study the manifestations of racism in all regions of the world without distinction. As it stood, paragraph 2 gave one to understand that the Special Rapporteur was required to place special emphasis on the situation in Europe; that indicated a certain bias. He proposed, therefore, that the text should be replaced by the following: "Recommends that the Special Rapporteur

examine the situation in all regions of the world, paying special attention to those regions where theories or attitudes of racial superiority were the most widespread". With that modification, the draft text would be more balanced and would not give the impression of any bias.

16. Mrs. DAES said that she fully endorsed the spirit of the draft resolution but that, like Mr. Bossuyt, she did not agree with the wording of paragraph 2. Certainly, racist and xenophobic incidents did occur in Europe but studies on that matter had already been done by the European Parliament and the Council of Europe. She therefore endorsed the amendment proposed by Mr. Bossuyt which, in her view, was a better reflection of the situation.

17. Mrs. CHAVEZ said that no people could pride itself on being entirely virtuous; at the same time, no one group should be considered as solely responsible for racism and racial discrimination in the world. There was no denying that racism existed in Europe and in the United States, but those were also the countries with the strongest anti-racist movements. As it stood, paragraph 2 implied that certain individuals were predisposed, by virtue of their origins, to racism. She thus shared the views of Mrs. Daes and Mr. Bossuyt and endorsed the amendment proposed by the latter, which made the text clearer and removed from it any racist connotation.

18. Mr. ALFONSO MARTINEZ, stressing that he was speaking on his own behalf and not on behalf of the sponsors of the draft resolution, said that, in his view, Mr. Bossuyt, Mrs. Daes and Mrs. Chavez were misinterpreting paragraph 2 of the draft resolution. The paragraph was, in fact, simply recommending that the Special Rapporteur should commence his work on contemporary forms of racism and racial discrimination with an examination of the situation in Europe. His mandate was obviously much broader. Still it was clear that the appointment of the Special Rapporteur by the Commission on Human Rights, in its resolution 1993/3, was tied to the fact that many manifestations of racism and xenophobia had recently appeared in a specific region of the world, namely Europe. That was why the Special Rapporteur had been requested to consider that region first. He hoped that his explanation had cleared up any misgivings that other members of the Sub-Commission might have with regard to the text. He noted, however, that if the amendment proposed by Mr. Bossuyt were put to a vote, he would not be able to vote in the affirmative, since he preferred the original wording of the paragraph in question.

19. Mrs. ATTAH said that, like Mr. Alfonso Martinez, she believed that it was not a matter of limiting the Special Rapporteur's mandate, but simply of requesting him to begin his study in the region where the disturbing incidents that had given rise to his appointment had taken place. She would therefore vote, as a matter of principle, against Mr. Bossuyt's amendment if it were put to a vote.

20. Mr. GUISSE said that, in his view, given the significance of the draft resolution, putting it to a vote might weaken its impact. It should be possible to find a compromise solution satisfactory to all and, to that end, he suggested that the adoption of the draft resolution should be deferred so that the members of the Sub-Commission could hold consultations and draft a text taking the full range of views into account.

21. Mr. DESPOUY, who had been absent up to that point and who was welcomed by the Chairman, said that the draft resolution under consideration was of great importance. He hoped, therefore, that the Sub-Commission could arrive at a compromise text for the paragraph in question which would preserve the general spirit of the draft and, at the same time, give it the same force as in previous years.

22. Mr. HELLER said that it was clearly stated in the third preambular paragraph of the draft that the Sub-Commission shared the concerns expressed by the Commission in face of the re-emergence of racism and xenophobia in many areas of the world "particularly in developed countries". It was to meet those concerns that the Commission had appointed the Special Rapporteur and it thus seemed relevant to call his attention to the need to grant priority to examining racist incidents which had occurred in certain developed countries. Perhaps the wording of the preambular paragraph could also be used in the operative paragraph. However, it was very important not to move away from the initial meaning of the draft.

23. Mr. SACHAR said that it was appropriate for the Special Rapporteur to study racism and xenophobia whose victims included immigrants in Europe. It was essential to preserve the spirit of the draft resolution; however, so that the text could be adopted by consensus, as Mr. Guissé had advocated, he proposed that paragraph 2 should read: "Recommends that the Special Rapporteur shall study this aspect of racism in full and begin his mandate by examining the situation in Europe". It would thus be clear that the Special Rapporteur had first to study the situation in Europe, which did not mean that he would not be examining the various manifestations of racism in other areas of the world.

24. Mrs. WARZAZI said that she shared the views of Mr. Alfonso Martinez, Mrs. Attah and Mr. Heller. That particular mandate had been granted to the Special Rapporteur precisely because serious events were currently taking place in Europe. She did not understood why discussion about the situation in Europe should be avoided in order to spare certain sensibilities. In fact, she welcomed the fact that it was finally out in the open. At the same time, it would be a good idea to find a compromise wording for the paragraph in question, while maintaining the general spirit of the draft.

25. Mrs. KSENTINI said that she was among those who had drafted the resolution under which the Commission on Human Rights had appointed the Special Rapporteur to examine, in particular, the various forms of racism and racial discrimination which had recently emerged in Europe. Certainly, racism existed in other countries in the world but those situations were already being studied in the context of special procedures and there was no reason for the international community not to monitor the situation in Europe, as had been done in other regions, even if the Governments involved were themselves taking measures to combat those phenomena. The recommendation to the Special Rapporteur in paragraph 2 of the draft resolution was, in consequence, of great importance. She was, nevertheless, willing to accept a compromise formulation as long as it did not call into question the spirit of the draft.

26. Mr. JOINET said that paragraph 2 was somewhat ambiguous. Was it the intention to retrace the history of "theories of racial superiority", in which

case one would have to go back to Roman times, or to study racist theories which were currently being advocated in Europe and which constituted destabilizing factors? Furthermore, were there really any regions which had not been colonized by individuals of European origin?

27. Mrs. ATTAH said that the amendment proposed by Mr. Sachar deprived paragraph 2 of its substance. Many people in the world were victims of racism; it was, therefore, a subject of great importance and in consequence she requested that the debate on the draft resolution should be deferred to allow time for reflection.

28. Mr. UL-HAKIM said that, in paragraph 2, the words "originated and were" should be replaced by "are at the present time".

29. Mr. HELLER said that paragraph 2 should be amended to read: "Recommends that the Special Rapporteur begin his mandate by examining the situation in various regions of the world, according particular attention to the increasing number of incidents in the industrialized countries and to the theories and attitudes of racial superiority giving rise to those incidents".

30. Mrs. ATTAH said that paragraph 2 of the text had been her initiative. Giving it up in order to adopt a compromise solution would require a great effort of good will on her part. She would, therefore, only agree to an amendment if it clearly established that the Special Rapporteur was to begin his mandate in Europe, where the incidents that had led to his appointment had occurred.

31. Mr. JOINET said that it would also be fitting to make reference in the draft resolution to new forms of discrimination against homosexuals which were appearing throughout the world. He proposed, therefore, that the words "and the new forms of discrimination" should follow "to the theories and attitudes of racial superiority". Nevertheless, if his proposal met with opposition in the Sub-Commission, he would withdraw it, reserving the right to return to the matter at the next session.

32. Mrs. ATTAH, supported by Mr. ALFONSO MARTINEZ, said that racism was a very serious problem and combining different issues might weaken the impact of the resolution. If he wished, Mr. Joinet could present a specific draft resolution on the question of discrimination against homosexuals.

33. Mr. GUISSE said that he could accept the new compromise formulation proposed by Mr. Heller; he could not, however, accept reference in the draft text to the problem of possible discrimination against homosexuals as that might weaken the impact of the resolution.

34. Mr. EIDE, speaking on a point of order, pointed out that the Sub-Commission had only a limited amount of time. As Mr. Joinet was not insisting on his proposal, it was no longer an issue.

35. Mr. JOINET said that it would be a mistake to consider discrimination against homosexuals as a trivial problem. The nazis had specifically

persecuted that group. The resurgence of that kind of problem was cause for concern. He would certainly withdraw his proposal but he reserved the right to return to it at the Sub-Commission's next session.

36. Mrs. WARZAZI said that in the new formulation of paragraph 2, as proposed by Mr. Heller, the word "begin" was inappropriate because the Special Rapporteur would be examining the situation in all regions of the world. She proposed, therefore, tnat paragraph should begin: "Recommends that the Special Rapporteur carry out his mandate by examining ...".

37. Mrs. ATTAH said that she had failed to notice the point emphasized by Mrs. Warzazi and, consequently, she considered the wording proposed by Mr. Heller to be unacceptable. In fact, what was involved was not granting particular attention to the industrialized countries but of beginning the examination of the situation with those countries.

38. Mr. ALFONSO MARTINEZ said that he fully supported Mrs. Attah. He was concerned that the amendments to the second paragraph proposed by Mr. Heller might dilute its original contents. For instance, by asking the Special Rapporteur to pay "particular attention" to incidents occurring in the developed countries, the implication was that he would also be studying incidents which had taken place elsewhere.

39. Mr. HELLER said that in any event the Special Rapporteur would carry out the mandate conferred on him by the Commission as he saw fit.

40. The CHAIRMAN suggested that the Sub-Commission should give itself some time for reflection and should resume consideration of the draft resolution at a later time.

41. It was so decided.

Draft resolution E/CN.4/Sub.2/1993/L.4 (agenda item 13)

(Elimination of all forms of intolerance and of discrimination based on religion or belief)

42. The CHAIRMAN said that Mrs. Daes, Mrs. Chavez, Mrs. Attah, Mrs. Ksentini and Mr. Sachar, Mr. Guissé, Mr. Heller, Mr. Maxim and Mr. Joinet wished to join the list of sponsors of the draft resolution.

43. Mr. YIMER said that in paragraph 5 of the draft resolution, in the English version, the words "should give" should be replaced by "gives".

44. Mr. GUISSE said that in paragraph 3 of the French version of the draft resolution, the word "tenants" should be replaced by "adeptes".

45. The CHAIRMAN indicated that the draft resolution had no financial implications.

46. Draft resolution E/CN.4/Sub.2/1993/L.4, as amended, was adopted without a vote.

HUMAN RIGHTS AND DISABILITY (agenda item 12)

47. Ms. SPALDING (International Association of Educators for World Peace) said that the organization she was representing feared that the report by Mr. Despouy on human rights and disabled persons (E/CN.4/Sub.2/1991/31), which had raised so many hopes at the time it had been issued, had fallen somewhat into oblivion. The International Association of Educators welcomed the work done by the ad hoc open-ended working group to elaborate standard rules on the equalization of opportunities for disabled persons (E/CN.5/1993/5), and the holding in October 1992, on the initiative of the Canadian Government, of the first International Conference of Ministers Responsible for Disability Issues, as well as the work carried out by ILO, ICRC and UNICEF. It was, nevertheless, seriously concerned by the manner in which issues relating to disabled persons were treated within the United Nations system. Would it not be appropriate for the Commission on Human Rights to collaborate with the Commission for Social Development on the elaboration of norms with a view to drafting a binding convention? It was also essential for the Sub-Commission, the Commission on Human Rights and the Commission for Social Development to develop and implement an effective system of monitoring.

48. The International Association of Educators endorsed the recommendations of the working group of the Commission for Social Development contained in paragraphs 179 to 191 of its report (E/CN.5/1993/5), in particular the recommendation to appoint a special rapporteur to ensure monitoring of the application of the Standard Rules (para. 180). It would also be appropriate for all potential donors - not only States - to contribute to the voluntary fund (para. 191). One might also wonder what was the Special Rapporteur's role vis-à-vis the "international ombudsman" referred to by Mr. Despouy in his report (para. 281). Further, of all the monitoring bodies to which the Centre for Human Rights had sent letters, in accordance with Mr. Despouy's recommendation, only the Committee on the Rights of the Child had acknowledged receipt.

49. To prevent Mr. Despouy's recommendations from having no impact, the Commission on Human Rights, at its next session, should request the Centre for Human Rights to send letters once again to the relevant monitoring bodies asking them to implement resolution 1992/48 of the Commission; appoint a co-rapporteur - who might be either Mr. Benyt Lindquist or Mr. Michel Gillibert - to provide, in conjunction with a member of the Centre for Human Rights, a link between the Commission on Human Rights and the Commission for Social Development; and appoint an ombudsman to ensure the application of the provisions relating to the rights of the 500 million disabled in the world. The International Association of Educators protested strongly against all those practices that were potential sources of disability including prostitution, child labour, removal of organs from children or use of anti-personnel mines.

50. With regard to the relationship between environment and disability, she noted that according to scientists studying the phenomena, the reduction in the ozone layer could result in a significant increase in skin cancers and cataracts. The Commission on Human Rights should, therefore, invite all Governments to ratify the Montreal Protocol. It would also be appropriate to collaborate in that area with the Commission on Sustainable Development.

51. The International Association of Educators, aware of the financial difficulties facing the United Nations, hoped that artists, through their talent and generosity, could help contribute to the voluntary funds system. In concluding, she expressed the hope that the organs of the United Nations would combine the qualities of heart and spirit to give fresh impetus to the defence of the cause of persons with disabilities.

52. Mr. DONALD (Disabled Peoples' International) said that the organization he was representing welcomed efforts made to publicize the gross violations of the rights of persons with disabilities; to address violations of human rights that caused disabilities; to obtain acknowledgement within the United Nations system that defence of the rights of the disabled was essential; and to ensure that the competent bodies of the United Nations had adequate resources to address the situation of persons with disabilities.

53. Disabled Peoples' International welcomed the fact that some of the recommendations made by Mr. Despouy in his report on human rights and disability were being implemented. In that regard, for instance, the Committee on Economic, Social and Cultural Rights had prepared a comprehensive questionnaire on the issue for States parties. Unfortunately, other recommendations had not been implemented. For example, the General Assembly had not decided to create a high-level advisory committee of persons nominated by organizations of disabled persons. Moreover, only a handful of countries had acceded to ILO Convention No. 159 on vocational rehabilitation, and the ombudsman to ensure respect for the rights of disabled persons had still not been appointed. The ombudsman could, inter alia, investigate reports that in Central America disabled persons were not admitted into certain refugee camps. He might also investigate the practice of mutilating children to turn them into more effective beggars, amputations practised on criminals in certain States, or disabilities resulting from torture of detainees. He urged the Sub-Commission to appoint an ombudsman and to give that individual the resources needed to fulfil his mandate.

54. Mrs. WASHBURN (International Educational Development) said that Mr. Despouy's report on human rights and disability represented a milestone in the defence of the rights of the disabled and justly emphasized that, currently, the principal causes of disability were poverty, armed conflicts and torture.

55. She wished to bring to the Sub-Commission's attention a recent example of a flagrant violation of the rights of disabled persons. In July 1993, the staff of Drin Hospital in Fojnica, Bosnia and Herzegovina, had, by order of the Croat national forces, abandoned the hospital, leaving behind the 600 disabled individuals, including 200 children, who were being cared for in that establishment. In the United States, the application of the death penalty to mentally retarded individuals was another example of the violation of the rights of disabled individuals. In 1986, Terry Roach and Jay Pinkerton had been executed: both had been minors at the time of the crime for which they received the death sentence and the doctors had diagnosed Terry Roach as being significantly mentally retarded. Similarly, Mr. Prejean, diagnosed as having serious mental limitations and who had been a minor at the time he had

committed the crime, had been executed. Failing entirely to respect the norms of international law and the decision of the Inter-American Commission on Human Rights, the United States Supreme Court had ruled in two decisions (Standford v. Kentucky and Johnson v. Texas) that age and mental retardation could not constitute mitigating circumstances in capital cases.

56. In conclusion, she urged the Sub-Commission to ask the Commission to appoint, in conformity with the recommendation made by Mr. Despouy in his report, an ombudsman to ensure respect for the human rights of the disabled. She gave the floor to Mr. Gottlicher.

57. Mr. GOTTLICHER (International Educational Development) presented data, supported by examples, concerning individuals disabled in Croatia during the war. According to incomplete figures from the Ministry of Health, 2,166 individuals had been disabled in 1991, 1992 and 1993 as a result of the war: 686 civilians, 1,301 soldiers of the Croatian Army and 179 members of the Croatian militia. Those individuals had sustained permanent disabilities. One element in that connection had not been given enough consideration under the agenda item on human rights and disability: the deliberate destruction of Croatian hospitals by the Serbs, a practice which prevented the wounded from receiving proper care. Many had died of their wounds as a result; others had had to undergo amputations. Attacks on doctors and nurses had given rise to similar consequences. He cited several examples from a document entitled "Targets of Preference: Destruction of Croatian Hospitals and Medical Centres". The hospital in Zadar had been hit by artillery shells on several occasions in 1991 and had again been under attack after 22 January 1993. Extensive damage had been done to the paediatric, gynaecological and neonatal wards, the electroneurophysiology laboratory, the division of infectious diseases and the hospital kitchen warehouse. In Sibenik, during artillery attacks by the Yugoslav army and air attacks in 1991, the main hospital building as well as a number of smaller out-patient buildings on the periphery of the city had suffered extensive damage. During the renewed Serbian attacks in March 1993, the hospital had again been hit by artillery shells: the roofs of the polyclinics and the hospital kitchen had been damaged and eight ambulances had been destroyed.

58. Mr. MENDOZA (Observer for El Salvador) said that human rights and disability was not only a political issue but also an ethnic one and, in that regard, he welcomed the excellent report by Mr. Despouy, which merited wide distribution. His country had paid particular attention to the question of disability at the Vienna Conference and he hoped that concrete measures would be taken, in particular the adoption of a set of standard rules. The topic of disability was very delicate, particularly with regard to disabilities that were the direct result of armed conflicts and that increased in number in the course of those conflicts. In that respect, every reconciliation was a symbol for the disabled that must not be forgotten. The people of El Salvador, crucified as they had been by suffering, were determined to put behind them once and for all their recent past of armed conflict.

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

(a) QUESTION OF THE HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

(b) QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY

(c) INDIVIDUALIZATION OF PROSECUTION AND PENALTIES, AND REPERCUSSIONS OF VIOLATIONS OF HUMAN RIGHTS ON FAMILIES

(d) THE RIGHT TO A FAIR TRIAL (agenda item 10) (continued)

59. Mr. TAYLOR (Amnesty International) said he wished to call the Sub-Commission's attention to the fact that violations of human rights, in particular the phenomenon of "disappearances" and political killings, were linked to impunity, which appeared to be the key element in transforming sporadic violations into a systematic pattern. It was only by tackling that problem that an effective combat could be carried out against serious human rights violations. In terms of Governments whose actions were characterized by the blatant abuse of power, impunity arose from a general disregard for the rule of law. In Morocco, for instance, the Government had been engaging in the practice of "disappearances" since the early 1960s. Some of those who had disappeared had spent years in secret detention centres. More than 300 women and men who had "disappeared" during long periods - up to 19 years - had been released in 1991; however, hundreds of others remained unaccounted for. No investigations had been carried out and the Moroccan Government denied any knowledge of them, as it had done with regard to those released in 1991. As for those who had been released, the Government had never accounted for their illegal detention; no perpetrator had ever been brought to justice and no provisions had been made for compensating or rehabilitating the victims. The international community, which had remained silent for all those years, must urge the Moroccan Government to reveal the truth about that matter and to ensure that justice was rendered.

60. In the province of Aceh in northern Sumatra, Indonesian security forces had killed an estimated 2,000 civilians during counter-insurgency operations; "disappearances" were also legion. That pattern was reminiscent of the situation in East Timor, where the Indonesian Government, using anonymous "death squads", was carrying out summary executions, a technique that had been described by President Suharto himself as "shock therapy" to restore public order.

61. Impunity should not exist in States claiming to be democratic. All State institutions, in particular the judiciary and the legislature, should provide safeguards ensuring that the perpetrators of extrajudicial executions, disappearances and other violations were accountable for their acts before the victims and their families, and society as a whole. Nevertheless, even those Governments frequently attempted to conceal the truth by undermining the powers of the judiciary. As a result, the perpetrators went unpunished.

62. From April 1992 to April 1993, Amnesty International had documented 57 extrajudicial executions in Peru, as well as 209 "disappearances" following detention by security forces. It seemed that such practices were systematic;

they had first become evident in 1983 when the Peruvian Government had launched a counter-insurgency campaign against the armed opposition, itself responsible for gross human rights abuses. There had been very few independent judicial investigations and the majority of them had not been satisfactorily concluded as the accused had been brought before military tribunals which had almost invariably acquitted them. According to Amnesty International's information, only two convictions had been handed down in the past 10 years by a military court.

63. Amnesty laws represented one of the most sophisticated forms of impunity. Legislative measures aimed at national reconciliation were often used to prevent justice from being done. In El Salvador, the General Amnesty Law for the Consolidation of Peace, adopted in March 1993, protected from prosecution all those responsible for carrying out or covering up "disappearances", extrajudicial executions or other serious violations of human rights committed in the context of the civil war (1980-1992). It specifically applied to those named in the March 1993 report of the Truth Commission mandated to investigate some of the worst violations. Non-governmental human rights organizations had challenged the legality of the amnesty law before the Supreme Court; however, the Court seemed to have abdicated its constitutional powers stating that it did not have jurisdiction over purely political questions. In contrast, the Government was much less diligent in implementing the Commission's recommendations, including an inquiry into the "death squads" and the creation of a compensation fund for victims. In Mauritania, the Parliament had enacted a law on 29 May 1993 granting total amnesty to security force members for all offences during the period 1989 to 1992, when more than 400 black Mauritanians had been killed by government forces or pro-government militia. At least 100 of them had been victims of extrajudicial executions. Dozens of others had "disappeared". Despite the holding in 1992 of the first multi-party elections and other political reforms, no investigations had been carried out. A complaint by lawyers on behalf of widows of individuals who had died while in detention had been rejected. Those examples were in sharp contrast with the principles set forth in the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights.

64. The scale of the human rights abuses committed in the former Yugoslavia had led the international community to consider measures unprecedented in the last 40 years to hold those responsible accountable for their acts. The establishment of an equitable and effective war crimes tribunal could be one step towards breaking the cycle of impunity and violence. Amnesty International believed that the tribunal should be the first step in the establishment of a permanent, international criminal court competent to try gross violations of human rights and of humanitarian law. In any event, the creation of such a tribunal would not relieve the authorities in the former Yugoslavia of the obligation to investigate allegations of violations of human rights and to bring the perpetrators to justice.

65. The previous year, Amnesty International had welcomed Sub-Commission decision 1992/23 to request two of its experts to undertake a study on the impunity of perpetrators of violations of human rights (E/CN.4/Sub.2/1993/6). It hoped that concrete measures would emerge from that study and that the experts and rapporteurs of the Sub-Commission would take full account in their work of the issue of impunity.

66. Mr. AL SENTURIAS (Commission of the Churches on International Affairs of the World Council of Churches), whose organization represented more than 300 churches worldwide, was speaking on behalf of the National Christian Council in Japan in order to draw the Sub-Commission's attention to the fate, during the Second World War, of many Japanese citizens who had criticized Japan's military invasion of Asia and the Pacific: those citizens had been illegally arrested and subjected to inhuman treatment. The Yokohama case was a good example of that episode in Japanese history: between 1942 and 1945, 62 journalists, pacifists and their friends had been arrested and kept in prison, accused of trying to re-establish the Communist Party. The interrogations and the trial had been concluded one month after the end of the war; 32 of those indicted had been found guilty of violating the law on the maintenance of public order, enacted in 1925 as a limitation on freedom of thought and expression in Japan. Among those condemned were a Quaker couple, Mr. and Mrs. Kawada, arrested in Yokohama upon their return from the United States in 1942. Mrs. Kawada had not only been tortured in prison but had been subjected to sexual violence. Four of the men had died in prison as a result of torture, two others had died shortly after their release and two others one year later.

67. Reflecting on the reasons for such abuses, he believed that they were due in particular to the system of Daiyo Kangoku or substitute prison, under which suspects could be detained in police stations for up to 23 days before any indictment. During that period, which was easily renewable, interrogations were carried out without any control by judicial authorities. The system of Daiyo Kangoku was still in force and had been since the Second World War, and opened the way for every kind of torture and cruel, inhuman or degrading treatment. Suspects kept in custody were not entitled to consult a court-appointed attorney and even when they engaged their own attorneys, they could only meet with them once or twice during their detention, and only for a quarter of an hour. As long as the Daiyo Kangoku system persisted, torture and false charges would continue. He gave the floor to Mr. Tohru Kimura, one of those indicted in the Yokohama case, so that he could testify directly before the Sub-Commission.

68. Mr. KIMURA (Commission of the Churches on International Affairs of the World Council of Churches) said that on 15 September 1945, the court had sentenced him, along with the other individuals indicted in the Yokohama case, to a prison term, on the basis of false confessions obtained by torture. Shortly after the judgement had been handed down, government officials had burned most of the files to prevent them from falling into the hands of the United States occupation authorities. Wishing to restore his honour, Mr. Kimura had requested a review of his case in 1986; that request had been refused by the authorities on the grounds that no new evidence had been brought forward. On 13 April 1991, the Supreme Court had confirmed the decision. That decision was a distortion of justice and was in violation of article 32 of the Constitution of Japan and of the International Covenant on Civil and Political Rights.

69. Mr. AL SENTURIAS (Commission of the Churches on International Affairs of the World Council of Churches) said that the Yokohama case was a typical example of the suppression of the freedom of thought and of expression by a totalitarian Government for the purpose of controlling its nationals and

waging a war of aggression. Unless the current Government recognized and rectified the misdeeds of the past, it could not be considered to respect the fundamental human rights guaranteed in the post-war Constitution. The World Council of Churches and the National Christian Council of Japan joined with the victims who were seeking to restore their honour and to call the attention of the international community to that affair and requested that pressure be put on Japan to reopen the case.

70. Mr. SILK (Robert F. Kennedy Memorial Center for Human Rights) said that he wished to draw the Sub-Commission's attention to the widespread problem of human rights violations under the authority of national security legislation. He recalled that legislation claiming to protect national security and public order had been used, in many countries, as a pretext for political repression and grave violations of human rights. In his view, international human rights instruments, such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, did not provide adequate protection because those instruments authorized Governments to restrict human rights for reasons of national security, without defining the parameters within which the grounds of national security could be invoked or the conditions in which such restrictions could be implemented. That flaw permitted many Governments to cloak violations of human rights in the rhetoric of public order and national security. Furthermore, while Governments might have justified the need for such laws during the cold war, such arguments were no longer plausible.

71. He applauded the work of the Sub-Commission in examining violations of human rights occurring in countries under a state of emergency. However, Governments did not need to proclaim a state of emergency in order to invoke the grounds of sedition, national security or public order. Even newly democratic States continued to violate fundamental rights by invoking their customary laws, which had not been annulled. In Kenya, for instance, sedition laws had been invoked to detain political activists, journalists and lawyers, to confiscate their passports and to suppress their views. Despite the fact that the country had adopted a multi-party democratic system, the Government continued to have at its disposal a variety of laws restricting the freedom of expression and quashing free political debate.

72. As an example, in February 1993, police in Kenya had confiscated thousands of copies of a news magazine critical of the country's President and had charged the magazine's publisher with sedition and had detained him for three weeks. His passport had been confiscated and the courts had refused to grant him bail on the presumption that he would continue his seditious activities, even though he had never been convicted. In that same month, the Government had arrested one of the country's leading dissidents and environmentalists. According to Amnesty International, the arresting officers had refused to identify themselves or to give any reasons for the arrest; while in police custody the individual involved had been severely beaten. He had spent two weeks in prison before being released on bail. The Preservation of Public Security Act was thus an effective tool for stifling any dissent and for detaining people indefinitely and without trial. The Public Order Act also allowed the Government to limit freedom of assembly and of expression and to deny permits to opposition parties for political rallies. Other statutes had also been used to suppress free association and the right to work.

73. In the Republic of Korea, a human rights activist, who at the Vienna Conference on Human Rights had spearheaded the movement against national security legislation, had become a victim of that very same legislation. Several weeks after his return from Vienna, security forces had arrested him without a proper warrant. He had eventually been charged with violating the Republic of Korea's National Security Law, simply for having been in possession of a pamphlet and a book written by former political prisoners.

74. In Tibet, "national security laws" were invoked regularly by the Chinese Government. In May 1993, two individuals had been arrested and accused of "stealing State secrets", an offence punishable by life imprisonment or death. According to a Chinese Foreign Ministry spokesperson, the two individuals had been engaged in "separatist activities which threatened China's national security". The two men, who were monitoring the human rights situation in Tibet, had, at the time of their arrest, allegedly been planning to provide information to a European Community delegation visiting Tibet. Those men had been held in detention for three months without having been charged, and they risked the death penalty for having defended human rights.

75. Those situations demonstrated how easy it was to use the protection of national security and public order as a pretext to violate fundamental human rights. Furthermore, under those laws, individuals were often detained indefinitely, interrogated under abusive conditions, and denied access to counsel and family visits. Even when they are not explicitly invoked, such laws, as long as they remained, would jeopardize the rights and freedoms of every citizen. He therefore urged the Sub-Commission, through its Working Group on Detention, to define more precisely what was meant by public order and national security and to define the limits of the application of a state of emergency. He further requested that the Sub-Commission should undertake a study of violations under national security laws to identify the effects of such legislation on the enjoyment of basic rights and freedoms.

76. Mr. ALFONSO MARTINEZ said that, at the previous meeting, he had informed the members of the Sub-Commission of the incident which had taken place in Laredo, on the border between Mexico and the United States, where 13 persons wishing to provide assistance to the Cuban population were blocked and had begun a hunger strike. The situation remained unchanged and the strike continued. He would report again on the situation at a later meeting.

The meeting rose at 6 p.m.